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## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

SCI Denials Working Group - Final Report on Appeal Procedures

FROM:

Staff, ~~DCI~~ Security Committee

EXTENSION

NO.

DATE

November 15, 1978

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

Exec. Sec. SECOM

RT

2.

Hold for Pre SECOM

3.

Chairman, SECOM

4.

5.

6.

7.

8.

9.

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11.

12.

13.

14.

DIA review completed.

15.

Attached find package recently assembled, including the SCI Denials Working Group draft Appeals Procedure, as well as other drafts and comments relating to OGC and [ ] positions.

In view of the time element concerned, [ ] has signed Tab B as indicated and disseminated copies of the final report of Appeal Procedures to all SECOM members, and the matter has been placed on the agenda for discussion at the next SECOM meeting on 29 November, 1978.

This is in keeping with your request at the last SECOM meeting that all principals review the working group draft and be prepared to discuss same as a result of Navy's implementation of their own procedures.

*Never off the ground*

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15 Nov 78

MEMORANDUM TO: [redacted]  
Chairman, DCI Security Committee

THROUGH: [redacted]  
Executive Secretary  
DCI Security Committee

FROM: [redacted]  
Staff, DCI Security Committee

SUBJECT: SCI Denials Working Group - Final Report  
on Appeal Procedures

1. There is attached hereto, identified as Tab A, the report of the Acting Chairman, SCI Denials Working Group which forwarded the final draft of recommended appeals procedure.

2. There is also attached a proposed memorandum to all members of the Security Committee which forwards the recommended Appeals Procedure to all members for their consideration and discussion, as appropriate, at the next scheduled Security Committee meeting. (see Tab B).

3. In view of the controversial nature of this proposal, it is not recommended that the matter be submitted as an agenda item for a vote at the next meeting. This recommended course of action is believed to be consistent with your request at the last Security Committee meeting that the Security Committee principals review the Working Group draft, primarily, in view of the unilateral action taken by the Navy to implement their own SCI Appeal Procedures.

4. In addition thereto, there is also attached a memorandum which concerns itself with the position taken by [redacted] that the organization he represents cannot concur in, nor comply with the recommendations of the Working Group. This memorandum, entitled "Proposed Appeal Procedures for SCI Approval" is identified as Tab C.

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Attachment

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Exempt from general  
declassification schedule of E.O. 11652  
exemption category b2(1), b(3)  
Automatically declassified on  
Date impossible to Determine

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5. As you will recall, [redacted] OGC, has recommended that the proposed SCI Appeal Procedures make provision for DCI overview and/or contain a provision that the DCI will be the final appeal for any and all SCI denial cases. This is in direct conflict with the recommendation of the Working Group that the SIO will have final appeal authority in such cases originating under his individual jurisdiction. This latter point is referred to by Mr. John E. Burns in his memorandum of 8 November 1978 (see Tab A).

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6. I am personally convinced that there is no need for DCI overview as recommended by [redacted]. I further submit that it is inconsistent with other provisions of DCID 1/14 which have delegated all other authorities relating to the investigation, adjudication, and administration of SCI within their respective jurisdictions. It is also believed that the individual SIOs would misinterpret any attempt by the DCI to become involved in SCI appeals as an infringement upon their individual prerogatives. In conclusion, it is believed that the draft, as presented by the Working Group would accomplish the desired objective, i.e. the establishment of a simplified, streamlined, minimum SCI Appeals Procedure that still permits the individual SIOs to retain authority delegated to them under DCID 1/14 and to administer an appeals procedure in a uniform manner, consistent with the requirements of the individual agencies.

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**DEFENSE INTELLIGENCE AGENCY**  
WASHINGTON, D.C. 20301

FOUO-5637/RSS-3

8 NOV 1978

MEMORANDUM FOR THE CHAIRMAN, DCI SECURITY COMMITTEE

SUBJECT: SCI Denials Working Group - Final Report on Appeal Procedures

1. Since August 1978, the SCI Denials Working Group (SCIDWG) has held several meetings based on tasking from the Chairman, Security Committee, to draft due process/appeal procedures in the SCI clearability process.

2. From the outset, there was considerable disagreement over the need for formal appeal procedures. The DoD members felt that DoD security policy already observed due process, while other member agencies did not. In this context, the question of whether access to SCI is a privilege was often raised.

3. In September 1978, the DoD members drafted a proposal for a change to DCID 1/14 which would incorporate the following:

"Each Senior Intelligence Officer shall establish formal procedures ensuring that individuals denied access to SCI are notified of the decision and are afforded a reasonable opportunity to respond."

Although the Chairman, SECOM, advised that a more detailed procedure was needed, DoD members of the SCIDWG still feel that insertion of this statement would protect the rights of the individual while sustaining the equity of each agency or department.

4. In October 1978, a more comprehensive and detailed procedure was drafted by the undersigned, based on input from DIA and the Military Departments. NSA participated in all meetings, but made it clear that it does not agree in the basic concept of an appeal procedure for SCI inasmuch as there are already well established and frequently used avenues of relief for individuals who have been denied access.

5. At a plenary session of the Working Group, on 25 October 1978, the expanded DoD draft (as Annex B to DCID 1/14) was submitted and objections were raised on such grounds as: legal necessity; requirement for notification of denial; concern over confidentiality of sources; and a perceived administrative burden. The strongest objection was registered when OGC, CIA, suggested that the DCI act as final authority in the appeal process. Obviously, the membership is convinced that each SIO is fully capable of administering due process within his department or agency.

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6. In view of the above, draft Annex B to DCID 1/14 has been revised to incorporate changes requested by various members of the Working Group and is submitted herewith for consideration by the Security Committee at its next meeting (enclosure 1).

7. I should like to thank the members of the Working Group for their valuable assistance and also [redacted] Community Security Group, for his outstanding support. I appreciate the opportunity to participate in these important endeavors.

1 Enclosure a/s

JOHN E. BURNS  
Acting Chairman  
SCI Denials Working Group

ANNEX B TO DIRECTOR OF CENTRAL INTELLIGENCE DIRECTIVE 1/14

APPEALS PROCEDURES

1. Purpose. To establish uniform procedures for those individuals who have been denied access to Sensitive Compartmented Information (SCI) and who desire to appeal determinations of ineligibility.
2. Policy. It is the policy of the Director of Central Intelligence that any individual who has been denied access to SCI based on the Personnel Security Standards set forth in paragraph 5, DCID 1/14, shall be afforded an opportunity to appeal such denial. This policy shall not be construed to require any agency or department to reveal more information than would be released under the Privacy Act of 1974.
3. Applicability. Provisions of this Annex shall apply to uniformed members of the Military Departments or civilian employees, consultants or contractors of all Federal agencies.
4. SCI Access Determination Authority. Adjudications for access to SCI shall be made by a Determination Authority designated by the Senior Intelligence Officer (SIO) of each Department or Agency. Findings of ineligibility shall be based on:
  - a. Failure to meet minimum investigative requirements set forth in paragraph 11, DCID 1/14.
  - b. Adjudicative conclusion that standards set forth in paragraph 5, DCID 1/14, have not been satisfied.
5. Requirements. Each SIO will establish procedures to ensure that:
  - a. Any individual who has been found ineligible for access to SCI shall be notified that he/she does not meet the Personnel Security Standards set forth in paragraph 5, DCID 1/14, if any inquiry is made.
  - b. Each individual deemed ineligible for SCI access shall, upon inquiry, be advised of procedures whereby he/she can ascertain the basis for the denial of access. In all cases, the agency or department will protect the right to privacy and the confidentiality of sources.
  - c. Each individual will be afforded a reasonable opportunity to offer mitigating, explanatory or refuting information in his/her behalf. Such information will be provided to the Determination Authority.

*Appropriate  
(Army)*

6. Review Authority. The SIO or his deisgnee will personally review any case wherein the individual has submitted additional information which is specific and relevant to a determination of ineligibility. In such cases, the decision of the SIO or his designee shall be final.

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TAB C

The BISM is a 1969 document and is no longer realistic in its reference to the absence of an appeals program in view of present operating procedures developed by Privacy Act requirements. Revision of the BISM is scheduled for early 1979 and the question of appeals procedures, should they ever be required, will be addressed in the revised manual. Section III (h), of the BISM, therefore, should not be regarded as the "out" for the National Office's participation in any appeals procedures. The substance of this section cannot be considered viable in today's world.

It should be noted that reference to an "appeals procedure" in the context of the SECOM responsibility does not mean that the disapproving authority would "inform the disapproved person....or) allow, even encourage him to generate an appeal to the disapproving authority." What it does mean is that a mechanism needs to be established to adequately provide for the time when an appeal is generated.

The National Programs Staff and its various member program offices should develop within DoD some mechanism which will front for appeal inquiries involving all BYE program offices. It is not intended that the National Office's current covert status be violated in such a process, but rather that a pre-arranged method of dealing with appeals be made a part of this Committee's present attempt to systematize Community approaches to adjudication and appeals procedures.

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MEMORANDUM FOR:

Merrill Kelly Army SoCom member  
called 25 Jan.

Re: Appeals.

Army concurs but their lawyers  
recommend change line 3 Para 5B  
"all" to "appropriate".

Send them the memo anyway.  
Kelly said they would answer formally.  
But you can start your list of concurrences  
with the Army word.      Date

FORM 101 USE PREVIOUS  
5-75 EDITIONS